IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/04/2005

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

H.C.P.No. 1121 of 2004

Singaravelu Balu,
S/o. Singaravelu,
No.34, Thamirabarani Street,
Anna Nagar, Chennai-113. .. Petitioner/Detenu.

-Vs-

1. The State of Tamil Nadu,
represented by the Secretary to the
Government, Public (SC) Department,
Fort St. George, Chennai-9.

2. The Union of India,
represented by the Secretary to the
Government, Ministry of Finance,
Department of Revenue, New Delhi.

3. The Superintendent of Central Prison,
Central Prison, Chennai-3. ..Respondents/Respondents.

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for records relating to detention order in G.O.No. S.R.1/985-4/2004 dated 20-8-2004, passed by first respondent herein and quash the same and direct the respondent to produce the body of the person of the detenu namely Singaravelu Balu before this Court, now detained in Central Prison, Chennai and set him at liberty.

!Mr. I. Subramanian, Senior counsel for
Mr. M. Velmurugan:- For Petitioner.

^Mr. A. Kandasamy, Addl. Public Prosecutor:-
For Respondents 1 and 3.

Mrs. Vanathi Srinivasan, Addl. Central Govt.,
Standing counsel:- For 2nd Respondent.

:ORDER
(Order of Court was made by P. Sathasivam, J.,)

One Singaravelu Balu, who was detained under Section 3 (1) (i) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the COFEPOSA Act") challenges the detention order dated 20-8-2004 passed by the first respondent on various grounds.

2. Heard Mr. I. Subramanian, learned senior counsel for the petitioner; Mr. A. Kandasamy, learned Addl. Public Prosecutor for respondents 1 and 3 and Mrs. Vanathi Srinivasan, learned Additional Central Government Standing counsel for 2nd respondent.

3. Mr. I. Subramanian, learned senior counsel for the petitioner, after taking us through the grounds of detention and all other connected materials, has raised the following contentions:

(i) Inasmuch as the detenu knows only Tamil language, in the absence of supply of Tamil version of customs declaration form to the detenu, he is prevented from making effective representation, and on this ground the detention order is liable to be set aside.

(ii) Regarding arrest of the detenu was not properly intimated to his family members.

On the other hand, learned Additional Public Prosecutor representing respondents 1 and 3 would submit that all the required relied on documents were furnished to the detenu in the language known to him and his family member was also intimated regarding his arrest; hence there is no flaw in the procedure followed.

4. We have carefully considered the grounds of detention, relevant materials and the rival submissions.

5. Coming to the first contention, Mr. I. Subramanian, learned senior counsel for the petitioner, by drawing our attention to page 10 of the paper book supplied to the detenu, would submit that since certain relevant statements have been made such as "No gold, No silver, Rs.35,000/-", the detenu being unaware of any other language than Tamil, he is entitled Tamil version of the said endorsement in order to make effective representation. He further contended that in the absence of non supply of Tamil version of the said document, the detenu is prejudiced. On the other hand, with reference to the same contention, learned Additional Public Prosecutor would submit that relied on documents have been furnished. He brought to our notice an endorsement in the declaration form, which was made in his (detenu's) own hand-writing that too in Tamil language. The endorsement reads as under:

"tr;R 3200 2500
[supplied (watch)

by us]
gu!; 40 1000
(Purse)

3500

Sd/-xxxx"

As rightly pointed out by the learned Additional Public Prosecutor, the endorsement made in the declaration form which finds a place at page 10 of the paper book, supplied to the detenu, makes it clear that (1) the said endorsement is by the detenu himself; and that (2) it was written in Tamil language. It is not in dispute that copy of the same has been furnished to the detenu. Accordingly, though the learned counsel for the petitioner has relied on a judgement of this Court dated 21-9-2004 rendered in H.C.P.No. 590 of 2004 [Daku Devi v. State of Tamil Nadu and another], to substantiate his defence for the reasons stated above, the same is not applicable to the facts of the present case. In such a circumstance, we find no force in the first contention raised by the learned senior counsel for the petitioner.

6. Coming to the second contention that family member was not properly intimated regarding his arrest, it is not the case of the petitioner that his arrest was not at all intimated to the family member. As a matter of fact, even in his representation dated 9-10 -2004, in page 7, he complained that his arrest was not properly intimated to his family members. His complaint reads as follows:

(Vernacular Portion deleted)

In para 13 of the affidavit, the petitioner/detenu has raised an objection with regard to the same. While meeting out the said objection, it is stated in para 15 of the counter affidavit that:
"The phonogram referred to in this paragraph (para 15) was sent to the address as furnished by the detenu in his voluntary statement as where he was living with his wife and children, but did not disclose the name of his wife. Further, when the officers visited the said premises for search, it was found locked. The phonogram was sent to the above said address inadvertently in the name (of) his deceased father. However, the phonogram was duly received by the family members of the detenu....."

Though in the said paragraph the deponent of the counter affidavit did not mention the exact time and date on which the intimation was sent to the family members, the fact remains that the phonoram was duly received by the family members of the detenu. The records produced by the learned Additional Public Prosecutor would substantiate the same. It is unfortunate that the deponent of the counter affidavit did not take more care in mentioning the time and date of sending the intimation to his family members, especially when such an objection was taken by the petitioner in para 13 of his affidavit. However, in the light of the limited objection raised in the representation of the detenu dated 9-10-2004 and in view of the information available in the

records produced, we also reject the second objection of the learned senior counsel for the petitioner.

Under these circumstances, we do not find any valid ground for interference; accordingly, the Habeas Corpus Petition fails and the same is dismissed.

R.B.

Index:-Yes.
Internet:- Yes.
To:

1. The Secretary to Government,
Public (SC) Department,
Secretariat, Chennai-9.

2. The Secretary to Government of India,
Ministry of Finance, Dept., of Revenue,
New Delhi-11.

3. The Public Prosecutor, High Court, Chennai-104.

4. The Superintendent,
Central Prison, Chennai-3.